

**MINUTES FROM THE  
IONIA CITY COUNCIL  
REGULAR MEETING  
TUESDAY, OCTOBER 3, 2006  
7:00 PM, CITY HALL COUNCIL CHAMBERS**

Mayor Balice called the meeting to order and lead with the Pledge of Allegiance.

**I. ROLL CALL**

**Present:** Mayor Dan Balice, Councilmembers Gordon Kelley, Monica Miller, Bruce Roetman, Brenda Cowling-Cronk and Bob O'Mara. Jeff Winters arrived at 7:03 p.m.

**Excused:** Jim Smith and Kim Patrick.

**Others Present:** Gary Cunningham, Chris Kenyon, Dave Bulling, Robin Mrhofer, Jason Eppler, Matt Painter, Lynn Lafler.

- OPEN PUBLIC HEARING:** 1) **A Public Hearing to receive comments on proposed amendments to existing Conditional Transfer of Property Agreements between the City and Ionia Township**  
2) **A Public Hearing to receive comments on a request from Meridian Automotive Systems for a Industrial Facilities Exemption Certificate**  
3) **A Public Hearing to receive comments on a request from Meridian Automotive Systems for a Personal Property Exemption Certificate**

**II. PUBLIC COMMENTS**

Tim Forell, owner of Austin Pines project, spoke with Council regarding Comparative Review/Inspection Fees. Mr. Forell gave Council an analysis of various projects completed over the past two years and their associated inspection and review fees. Mr. Forell requested Council re-consider some of the City's fees to be more competitive.

Scott Feehan spoke to Council regarding a car show on Main Street in June 2007. Believes the car show will bring in approximately 1500 people and certain streets would need to be closed from 8:00 am to 4:00 pm to accommodate the show. Mayor Balice asked Mr. Feehan to submit a written proposal on the scope of the project and request input from Public Safety, DDA Director, and City Manager.

Marilyn Webster asked that some care be taken when the proposed City Gateway entrance is developed in means not to ruin and possible Ionia history that may be buried.

**III. MONITORING INFORMATION**      Motion by Balice and Supported by Winters

- A. Approve the minutes from the regular city council meeting of September 5, 2006.
- B. Approve the minutes from the special city council meeting of September 25, 2006.
- C. Acknowledge the minutes from the DDA meeting of September 20, 2006.
- D. Acknowledge the minutes from the July 8, 2006 Ionia Housing Commission meeting.
- E. Approve the payroll for the pay period ending September 6, 2006 in the amount of \$113,550.39 and for the pay period ending September 20, 2006 in the amount of 116,620.08.
- F. Acknowledge the Accounts Payable for the Ionia Theatre for September, 2006, in the amount of \$17,003.33.
- G. Acknowledge the Accounts Payable for the DDA for September, 2006 in the amount of \$11,706.36.
- H. Approve the Accounts Payable for the City of Ionia for September, 2006 in the amount of \$1,708,302.05.

ROLL CALL VOTE: Ayes: Winters, Kelley, Miller, Balice, Roetman, Cowling-Cronk, O'Mara. Nays: None. Motion Carried.

- CLOSE PUBLIC HEARING:** 1) **A Public Hearing to receive comments on proposed amendments to existing Conditional Transfer of Property Agreements between the City and Ionia Township**  
2) **A Public Hearing to receive comments on a request from Meridian Automotive Systems for a Industrial Facilities Exemption Certificate**  
3) **A Public Hearing to receive comments on a request from Meridian Automotive Systems for a Personal Property Exemption Certificate**

**IV. BOARD DECISIONS AND ACTION ITEMS**

**B#1 Request for Exemption – Outdoor Boiler Moratorium (Reisbig)**

Mr. Reisbig requested an exemption to the Outdoor Boiler Moratorium for a piece of rental property located within the City limits. Council still would like some more information on the outdoor boilers and mentioned some of their concerns. Council suggested Mr. Reisbig attend the Planning Commission meeting on October 25, 2006.

## **B#2 Request for Industrial Facilities Exemption Certificate – Meridian Automotive Systems**

Motion by Miller and Supported by O'Mara to adopt a prepared Resolution granting an Industrial Facilities Exemption Certificate to Meridian Automotive Systems per its application dated September 14, 2006 and to approve the Industrial Facilities Exemption Certificate Agreement between the City and Meridian Automotive Systems and authorize the Mayor and Clerk to sign the agreement on behalf of the City.

### **CITY OF IONIA RESOLUTION**

#### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF IONIA GRANTING AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE TO MERIDIAN AUTOMOTIVE SYSTEMS FOR PERSONAL PROPERTY**

- WHEREAS,** the City of Ionia has received a request from Meridian Automotive Systems, 14 Beardsley Road, Ionia, for the issuance of an Industrial Facilities Exemption Certificate for personal property (equipment); and,
- WHEREAS,** upon receiving the request, and as required by P.A. 198 of 1974, MCL 207.551 et seq., a Public Hearing was conducted on October 3, 2006 by the City Council, notice of the Public Hearing having been published in a newspaper of local circulation; and,
- WHEREAS,** notice of the Public Hearing was provided by mail by the City to all units having taxing authority within the City; and,
- WHEREAS,** the Beardsley Road plant of Meridian Automotive Systems is located in an approved Industrial Development District, known as District Number 3, which was established on December 5, 1978; and,
- WHEREAS,** issuance of the certificate will permit Meridian Automotive Systems to remain competitive, replace aging equipment, maintain an employment base in the City and fulfill customer orders.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Ionia determines the following:

- 1) That granting an Industrial Facilities Exemption Certificate to Meridian Automotive Systems considered together with the aggregate amount of certificates previously granted and currently in force under Public Act 198 of 1974 and Public Act Number 255 of 1978, will not substantially impede the operations of the City of Ionia, or impair the financial soundness of other taxing units which levy ad valorem property taxes in the City of Ionia; and,
- 2) The application of Meridian Automotive Systems for an Industrial Facilities Exemption Certificate on a parcel of real property situated in Industrial Development District Number 3 is in proper order and is hereby granted. The description of the Certificate is:

One (1) Industrial Facilities Exemption Certificate issued by the City of Ionia by authority granted by Public Act 198 of 1974, as amended, for Meridian Automotive Systems, 14 Beardsley Road, Ionia, Michigan for Personal Property estimated at \$1,352,000 which is located within Industrial Development District #3; and
- 3) The Industrial Facilities Exemption Certificate when issued shall be and remain in force and effect for a period of 12 years, commencing with the completion date of the project which is anticipated at December 31, 2008 and continuing for a twelve year period; and
- 4) All aspects of the request are hereby approved.

### **CITY OF IONIA AND MERIDIAN AUTOMOTIVE SYSTEMS INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE AGREEMENT**

**THIS AGREEMENT** entered into this 3<sup>rd</sup> day of October, 2006 between the City of Ionia, a Michigan Municipal Corporation whose address is 114 North Kidd Street, Ionia, Michigan, 48846 (hereinafter referred to as "City") and Meridian Automotive Systems., 14 Beardsley Road, Ionia, Michigan 48846 (hereinafter referred to as

“Applicant”), an applicant for an Industrial Facilities Exemption Certificate, pursuant to Public Act 198 of 1974, as amended, with respect to the following matters:

### **BACKGROUND**

**WHEREAS,** Applicant has requested from the City a tax abatement for which an application was filed pursuant to Public Act 198 of 1974, as amended, wherein certain property taxes otherwise due and payable by the Applicant would be reduced; and,

**WHEREAS,** City has elected to require as a condition for granting any tax abatement to the Applicant that this Agreement be entered into pursuant to Public Act 334 of the Public Acts of 1993, as amended, which is an amendment to Public Act 198 of the Public Acts of 1974, as amended; and,

**WHEREAS,** pursuant to Section 22 of the statute it is now provided that a new Industrial Facilities Exemption Certificate shall not be approved by a local unit unless a written agreement is entered into between the local unit and the Applicant, and a copy is filed with the Department of Treasury of the State of Michigan;

### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 1) The Applicant has filed for a tax abatement pursuant to Public Act 198 of 1974, as amended, with the City which the City wishes to grant. Such tax abatement shall be pursuant to the application but subject to the terms and conditions in this agreement as follows:
  - a. In the event the Applicant does not substantially comply with the application approved by the City for the tax abatement with respect to the items described in the application within the time frame provided in the application, the City may notify the Applicant of its intent to terminate the tax abatement upon failure of the Applicant to show that it will substantially comply with the provisions contained in the application. The City may revoke the tax abatement previously approved for the Applicant.
  - b. In the event the Applicant ceases operation of its industrial facility in the City so that it no longer is employing people and producing goods and no successor employer is occupying the facility and providing industrial employment during the term of the tax abatement as described in the application, the Applicant shall, within ninety (90) days of the date of the breach, pay to the City such sums as would have previously been paid to the local taxing authorities had no abatement been approved. Under extenuating circumstances, variance and or waiving of such repayment to the City may occur only by approval of the City Council.
- 2) In the event the City revokes the tax abatement pursuant to paragraph 1(b) and if the taxes are not repaid within 90 days after such revocation, the City may add to the property tax statement of the owner of the premises previously occupied by the Applicant the full amount due plus administrative costs of twenty (20%) percent. Such amount shall be held as a lien against the property until paid.
- 3) With reference to the Personal Property described by the Applicant in the application for which a tax abatement is being requested, the following State Tax Commission Depreciation Tables shall be used: heavy machinery and heavy equipment shall be depreciated using long-lived multipliers; furniture and fixtures shall be depreciated using average-lived multipliers; and computer equipment shall be depreciated using the computer equipment multipliers. This shall remain in effect during the term of this tax abatement and any challenge shall be determined to be a termination of the tax abatement. Such multipliers shall be in accordance with the latest numbers provided by the State of Michigan.
- 4) This abatement shall be for a period of 12 years.

**THIS AGREEMENT** shall be binding upon the parties hereto and their successors and assigns.

**IN WITNESS WHEREOF,** the parties have executed this agreement as of the day and year first above provided and a true copy thereof shall be filed with the Department of Treasury of the State of Michigan pursuant to Public Acts of 1993.

ROLL CALL VOTE: Ayes: Kelley, Miller, Balice, Cowling-Cronk, O'Mara, Winters. Abstain: Roetman. Nays: None. Motion Carried.

### **B#3 Request for Personal Property Exemption Certificate – Meridian Automotive Systems**

Motion by Miller and Supported by Kelley to adopt a prepared Resolution granting Meridian Automotive Systems a Personal Property Tax Exemption Certificate for the period of December 31, 2006 to December 30, 2018.

**CITY OF IONIA  
RESOLUTION**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF IONIA GRANTING A PERSONAL PROPERTY EXEMPTION CERTIFICATE TO MERIDIAN AUTOMOTIVE SYSTEMS PER PUBLIC ACT 328 OF 1998, AS AMENDED**

- WHEREAS,** based on State legislative action, the City of Ionia is eligible to issue Personal Property Exemption Certificates per Public Act 328 of 1998, as amended; and,
- WHEREAS,** the City of Ionia has received a request from Meridian Automotive Systems, 14 Beardsley Road, Ionia, for the issuance of a Personal Property Exemption for personal property (equipment) per Public Act 328 of 1998, as amended; and,
- WHEREAS,** upon receiving the request, and as required by Public Act 328 of 1998, as amended, a Public Hearing on the request was conducted on October 3, 2006 by the City Council, notice of the Public Hearing having been published in a newspaper of local circulation; and,
- WHEREAS,** notice of the Public Hearing was provided by mail by the City to all units having taxing authority within the City; and,
- WHEREAS,** the Beardsley Road plant of Meridian Automotive Systems is located in an approved Industrial Development District, known as District Number 3, which was established on December 5, 1978; and,
- WHEREAS,** issuance of the certificate will permit Meridian Automotive Systems to remain competitive, replace aging equipment and maintain an employment base in the City.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Ionia determines that it is in the City's best interest to grant the request from Meridian Automotive Systems for a Personal Property Exemption Certificate for the period of December 31, 2006 to December 30, 2018 which will exempt all personal property from taxation purchased by Meridian Automotive Systems during this twelve year period.

**BE IT FURTHER RESOLVED** that the City Council of the City of Ionia has determined that granting the Certificate will not substantially impede the operations of the City, or impair the financial soundness of other taxing units which levy ad valorem property taxes in the City.

ROLL CALL VOTE: Ayes: Miller, Balice, Roetman, Cowling-Cronk, O'Mara, Winters, Kelley. Nays: None. Motion Carried.

**B#4 Environmental Response Millage Ordinance**

Motion by Miller and Supported by Winters to move into Executive Session at 8:25 pm. All in favor via voice vote.  
Motion by Miller and Supported by Cowling-Cronk to return to open session at 8:40 pm. All in favor via voice vote.

Motion by Winters and Supported by Balice to approve \$115,950 in budget reductions/reallocations to the FY06-07 General Fund budget and authorize the City Treasurer to make the necessary adjustments to the City's financial reports.

ROLL CALL VOTE: Ayes: Cowling-Cronk, O'Mara, Winters, Kelley, Balice, Roetman. Nays: Miller. Motion Carried.

Motion by Kelley and Supported by Winters to permit the record of the October 3, 2006 meeting to reflect the introduction and first reading of Ordinance No. 440 and schedule a Public Hearing on the proposed ordinance for 7:00 PM, Wednesday, November 8, 2006 in the Council Chamber of City Hall.

ROLL CALL VOTE: Ayes: Roetman, Cowling-Cronk, Omara, Winters, Kelley, Miller, Balice. Nays: None. Motion Carried.

**B#5 Lampman Property Line issue – Townsend Street**

Motion by Winters and Supported by Balice to proceed with the conveying of property at the north of end of Townsend Street to Mr. and Mrs. Lee Lampman as recommended by the City Manager and authorize the Mayor and Clerk to sign the necessary conveyance documents upon being prepared by the City Attorney.

ROLL CALL VOTE: Ayes: O'Mara, Winters, Kelley, Miller, Balice, Roetman, Cowling-Cronk. Nays: None. Motion Carried.

## **B#6 Development Agreement – Water Extension/Goodwill Store**

Motion by Winters and Supported by Roetman to approve the Development Agreement Water Extension between A&R Development II, LLC and the City of Ionia for Goodwill Stores and authorize the Mayor and Clerk to sign the agreement on behalf of the City.

### **DEVELOPMENT AGREEMENT** **WATER EXTENSION**

This Development Agreement (the "Agreement") is made as of 3rd day of October, 2006 between **A&R DEVELOPMENT II, LLC** of 130 60<sup>th</sup> Street SW, Grand Rapids, Michigan 49548 ("A&R") and the **CITY OF IONIA**, a Michigan municipal corporation, whose address is 114 North Kidd Street, Ionia, Michigan 48846 (the "City").

#### **PREMISES FOR AGREEMENT**

WHEREAS, A&R has an interest in constructing a 13,307 square foot retail facility at a site on Sprague Road in Berlin Township, south of the City (the "Facility"); and

WHEREAS, A&R has had designed, with City participation, a water delivery system for both potable water and fire supply to the Facility as shown on Exhibit "A" ("Water System"); and

WHEREAS, the City has indicated that it has the authority, the desire, and the financial ability to operate the water system when completed and built in accordance with design by the City's engineers and with permits issued by the State of Michigan Department of Environmental Quality; and

WHEREAS, A&R has expressed an interest in building and connecting to the completed water system; and

WHEREAS, Berlin Township has approved the franchise for the water connection and associated fees;

NOW, THEREFORE, in consideration of the premises and other valuable considerations, the receipt and adequacy of which are hereby acknowledged by each party to the other, A&R and the City covenant and agree as follows:

1. Water System. A&R will build the proposed Water System as designed by the City's engineers in consultation with A&R and as permitted by the State of Michigan Department of Environmental Quality. The Water System will be connected to an existing water main located on M-66 in the vicinity of Sprague Road, extended to the west along Sprague Road and connected to the existing water main located by Walmart.
2. Engineering. A&R will bid and contract with a contractor licensed and insured to build the Water System to the Facility. Engineering oversight shall be provided by the City's engineer, Fishbeck-Thompson-Carr & Huber ("Engineering Oversight") and paid for by A&R at the rates previously negotiated by the City and Fishbeck-Thompson-Carr & Huber as illustrated on Exhibit "B". A&R shall reimburse the City for all costs incurred relative to the Engineering Oversight within five (5) days of the first day following the Completion Date of the Water System and delivery of water to the Facility ("Engineering Oversight Costs").
3. Insurance. A&R shall obtain an insurance policy from its contractor for the Water System project, naming the City as an additional insured, which policy shall have coverage limits in amounts reasonably approved by the City. In addition, A&R shall indemnify and hold the City harmless from any and all claims arising out of said construction of the Water System.
4. Consideration. In consideration of A&R undertaking construction of the Water System to its Facility, the following consideration shall be given by the City and A&R:
  - A. A&R shall receive water delivered through the Water System at the same rates as other customers in townships surrounding the City and in accordance with rates established and adjusted by the City Council for the City from time to time, including the commodity and fire sprinkler system charges (if applicable).
  - B. A&R shall pay the sum of \$31,538 (\$2.37/square foot) to the City in full payment of all fees due under Section 214.05(c)(4)B.2 of the Codified Ordinances for the City. Payment shall be made upon execution of this Agreement.
  - C. The remaining standard initial water taps are waived by the City with A&R only responsible for paying for the water meter necessary to meet its specifications and for valving installed during the main construction project.

5. Ownership of Water System. Upon completion of the Water System, title to the Water System shall be transferred by A&R to the City by way of deeded ownership of Water System, free of all encumbrances. In addition, all reasonably necessary easements shall be granted to the City by A&R for the Water System across and under all property traversed by the Water System that is not located in an existing City controlled road right-of way. The City shall maintain the Water System, including flushing, repairs, and other normal maintenance work. The Water System shall be incorporated on the City's asset management plan for its overall water delivery system.

6. Construction of the Facility. Upon transfer of the Water System pursuant to Paragraph 5, A&R shall construct or cause to be constructed the Facility substantially in accordance with the general description set forth in Exhibit "A" which shall incorporate land use and planning standards of the City.

7. Representations and Warranties of the City. The City represents and warrants to A&R that:

- A. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the City, and this Agreement constitutes a valid and binding agreement of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.
- B. City is a public body corporation with all the necessary municipal corporate powers pursuant to that Act to enter into and perform this Agreement.

8. Representations and Warranties of A&R. A&R represents and warrants to the City that:

- A. A&R (i) is duly organized and validly existing as a Michigan limited liability Company in good standing under the laws of Michigan, with power under the laws of such state to carry on its business as now being conducted; and (ii) has the power and authority to own the Site and construct the Facility.
- B. There is no violation or default by A&R of any provision on its governing instruments or bylaws, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject, and compliance with the terms, conditions and provisions of this Agreement does not conflict with and will not result in or constitute a breach of or default under any of the foregoing, wherein default, breach or violation would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement. A&R further warrants that it will not challenge the payment of the fees, not participate or assist in any challenge, and will waive any claims against the City relating to the payment of the fee
- C. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of A&R and this Agreement constitutes a valid and binding agreement of A&R in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

9. Event of Default. Upon the failure of a party to comply with a material obligation or term of this Agreement (an "Event of Default"), the non-defaulting party shall have the right to obtain any form of relief permitted under the applicable laws and court rules of the State of Michigan, including (i) the right to seek and obtain a decree of specific performance of a court of competent jurisdiction; (ii) the right to any damages incurred by it, including any reasonable costs the non-defaulting party might incur enforcing or attempting to enforce this Agreement, including attorney fees and costs; and (iii) any other remedy available in equity or at law.

10. Notice of Default. Upon occurrence of an Event of Default, the non-defaulting party shall immediately notify in writing the defaulting party. Said written notice shall give the defaulting party thirty (30) days to cure. If such failure shall continue for a period in excess of thirty (30) days after the receipt of written notice, or if such failure is of such nature that the same cannot be cured within said thirty (30) day period, if the defaulting party shall fail to commence to cure such failure within said thirty (30) day period and thereafter fail to diligently prosecute such curing, then such party shall be deemed in default hereunder and the other party shall have the rights and remedies herein provided.

11. Assignment of this Agreement. No party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of all other parties hereto, which consent will not be unreasonably withheld.
12. Notices. All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the address set forth in the preamble to this Agreement.
13. Amendment and Waiver. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.
14. Entire Agreement. This Agreement, including Exhibits, contains all agreements between the parties with respect to the construction and operation of the Water System. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.
15. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
16. Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.
17. Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.
18. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.
19. Severability. If any one or more provisions of this Agreement or any instrument or other document delivered pursuant to this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the City and A&R have caused this Agreement to be duly executed and delivered as of the date first written above.

ROLL CALL VOTE: Ayes: Winters, Kelley, Miller, Balice, Roetman, Cowling-Cronk, O'Mara. Nays: None. Motion Carried.

#### **B#7 Development Agreement – Water Extension/Green Acres Phase II**

Motion by Winters and Supported by Roetman to approve the Development Agreement Water Extension between Maas Development and the City of Ionia for Green Acres Phase II and authorize the Mayor and Clerk to sign the agreement on behalf of the City.

#### **DEVELOPMENT AGREEMENT** **WATER EXTENSION**

This Development Agreement (the "Agreement") is made as of 3<sup>rd</sup> day of October, 2006 between **MAAS DEVELOPMENT**, a Michigan company, of 1845 Birmingham SE, Lowell, Michigan 49331 ("Maas") and the **CITY OF IONIA**, a Michigan municipal corporation, whose address is 114 North Kidd Street, Ionia, Michigan 48846 (the "City").

#### **PREMISES FOR AGREEMENT**

WHEREAS, Maas has an interest in constructing a 12,700 square foot elderly housing complex to be known as Green Acres Phase II on a parcel of property located south of Tuttle Road in Berlin Township, south of the City (the "Facility"); and

WHEREAS, Maas has had designed, with City participation, a water delivery system for both potable water and fire supply to the Facility as shown on Exhibit "A" ("Water System"); and

WHEREAS, the City has indicated that it has the authority, the desire, and the financial ability to operate the water system when completed and built in accordance with design by the City's engineers and with permits issued by the State of Michigan Department of Environmental Quality; and

WHEREAS, Maas has expressed an interest in building and connecting to the completed water system; and

WHEREAS, Berlin Township has approved the franchise for the water connection and associated fees;

NOW, THEREFORE, in consideration of the premises and other valuable considerations, the receipt and adequacy of which are hereby acknowledged by each party to the other, Maas and the City covenant and agree as follows:

1. Water System. Maas will build the proposed Water System as designed by its consultants and approved by the City's engineers as permitted by the State of Michigan Department of Environmental Quality. The Water System will be connected to an existing water main located off Tuttle Road in the vicinity of Green Acres Phase I and will extend to and tie into an existing water main located by Lowe's.
2. Engineering. Maas will bid and contract with a contractor licensed and insured to build the Water System to the Facility. Engineering oversight shall be provided by the City's engineer, Fishbeck-Thompson-Carr & Huber ("Engineering Oversight") and paid for by Maas at the rates previously negotiated by the City and Fishbeck-Thompson-Carr & Huber as illustrated on Exhibit "B". Maas shall reimburse the City for all costs incurred relative to the Engineering Oversight within five (5) days of the first day following the Completion Date of the Water System and delivery of water to the Facility ("Engineering Oversight Costs").
3. Insurance. Maas shall obtain an insurance policy from its contractor for the Water System project, naming the City as an additional insured, which policy shall have coverage limits in amounts reasonably approved by the City. In addition, Maas shall indemnify and hold the City harmless from any and all claims arising out of said construction of the Water System.
4. Consideration. In consideration of Maas undertaking construction of the Water System to its Facility, the following consideration shall be given by the City and Maas:
  - A. Maas shall receive water delivered through the Water System at the same rates as other customers in townships surrounding the City and in accordance with rates established and adjusted by the City Council for the City from time to time, including the commodity and fire sprinkler system charges (if applicable).
  - B. Maas shall pay the sum of \$30,099 (\$2.37/square foot) to the City in full payment of all fees due under Section 214.05(c)(4)B.2 of the Codified Ordinances for the City. Payment shall be made upon execution of this Agreement.
  - C. The remaining standard initial water taps are waived by the City with Maas only responsible for paying for the water meter necessary to meet its specifications and for valving installed during the main construction project.
5. Ownership of Water System. Upon completion of the Water System, title to the Water System shall be transferred by Maas to the City by way of deeded ownership of Water System, free of all encumbrances. In addition, all reasonably necessary easements shall be granted to the City by Maas for the Water System across and under all property traversed by the Water System that is not located in an existing City controlled road right-of way. The City shall maintain the Water System, including flushing, repairs, and other normal maintenance work. The Water System shall be incorporated on the City's asset management plan for its overall water delivery system.
6. Construction of the Facility. Maas shall construct or cause to be constructed the Facility substantially in accordance with the general description set forth in Exhibit "A" which shall incorporate land use and planning standards of the City.
7. Representations and Warranties of the City. The City represents and warrants to Maas that:
  - A. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the City, and this Agreement constitutes a valid and binding agreement of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or



hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

- B. City is a public body corporation with all the necessary municipal corporate powers pursuant to that Act to enter into and perform this Agreement.

8. Representations and Warranties of Maas. Maas represents and warrants to the City that:

- A. Maas (i) is duly organized and validly existing as a Michigan limited liability Company in good standing under the laws of Michigan, with power under the laws of such state to carry on its business as now being conducted; and (ii) has the power and authority to own the Site and construct the Facility.
- B. There is no violation or default by Maas of any provision on its governing instruments or bylaws, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject, and compliance with the terms, conditions and provisions of this Agreement does not conflict with and will not result in or constitute a breach of or default under any of the foregoing, wherein default, breach or violation would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement. Maas further warrants that it will not challenge the payment of the fees, not participate or assist in any challenge, and will waive any claims against the City relating to the payment of the fee
- C. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Maas and this Agreement constitutes a valid and binding agreement of Maas in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

9. Event of Default. Upon the failure of a party to comply with a material obligation or term of this Agreement (an "Event of Default"), the non-defaulting party shall have the right to obtain any form of relief permitted under the applicable laws and court rules of the State of Michigan, including (i) the right to seek and obtain a decree of specific performance of a court of competent jurisdiction; (ii) the right to any damages incurred by it, including any reasonable costs the non-defaulting party might incur enforcing or attempting to enforce this Agreement, including attorney fees and costs; and (iii) any other remedy available in equity or at law.

10. Notice of Default. Upon occurrence of an Event of Default, the non-defaulting party shall immediately notify in writing the defaulting party. Said written notice shall give the defaulting party thirty (30) days to cure. If such failure shall continue for a period in excess of thirty (30) days after the receipt of written notice, or if such failure is of such nature that the same cannot be cured within said thirty (30) day period, if the defaulting party shall fail to commence to cure such failure within said thirty (30) day period and thereafter fail to diligently prosecute such curing, then such party shall be deemed in default hereunder and the other party shall have the rights and remedies herein provided.

11. Assignment of this Agreement. No party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of all other parties hereto, which consent will not be unreasonably withheld.

12. Notices. All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the address set forth in the preamble to this Agreement.

13. Amendment and Waiver. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

14. Entire Agreement. This Agreement, including Exhibits, contains all agreements between the parties with respect to the construction and operation of the Water System. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

15. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
16. Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.
17. Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.
18. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.
19. Severability. If any one or more provisions of this Agreement or any instrument or other document delivered pursuant to this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the City and Maas have caused this Agreement to be duly executed and delivered as of the date first written above.

ROLL CALL VOTE: Ayes: Kelley, Miller, Balice, Roetman, Cowling-Cronk, O'Mara, Winters. Nays: None. Motion Carried.

#### **B#8 City Assessor's Agreement**

Motion by Kelley and Supported by O'Mara to approve the City Assessor Service Agreement between the City and Griffith Appraisal & Assessing Services for a term ending June 30, 2008 and authorize the Mayor and Clerk to sign the agreement on behalf of the City.

ROLL CALL VOTE: Ayes: Miller, Balice, Roetman, Cowling-Cronk, O'Mara, Winters, Kelley. Nays: None. Motion Carried.

#### **B#9 Election Workers**

Motion by Balice and Supported by Miller to approve the following Election Chairpersons and inspectors for the November 7, 2006 General Election and the pay rate of \$9.50 an hour for the Election Chairpersons and the rate of \$8.50 an hour for the Election Inspectors:

##### **Ward 1 – Watt Auditorium**

Kate Perry, Chair, 527-4734  
Jean Clark, 527-1067  
Wayne Kenyon, 527-4416

\*\*\*Philip Kahl will assist Wards 1 & 2 from 11:00 am to 5:00 pm

##### **Ward 3 – Watt Auditorium**

David Cook, Chair, 527-1825  
Barb Lower, 527-4605  
Lynda Piper, 527-1969

\*\*\*Krista Hans will assist Wards 3 & 4 from 11:00 am to 5:00 pm

##### **Ward 2 – Watt Auditorium**

Brenda Cowling-Cronk, Chair, 527-6227  
Martha Bush, 527-2698  
Pfunandre Redvict, 527-8195

##### **Ward 4 – Watt Auditorium**

Dave Stiles, Chair, 527-1521  
Roxanne Stiles, 527-1521  
Roxanne Thelen, 616-581-1822

ROLL CALL VOTE: Ayes: Miller, Balice, Roetman, Cowling-Cronk, O'Mara, Winters, Kelley. Nays: None. Motion Carried.

#### **V. INCIDENTAL INFORMATION**

- A. Councilmembers to approve accounts payables for October 12, 2006 Bob O'Mara and/or Monica Miller and for October 26, 2006 Jeff Winters and/or Gordon Kelley.

#### **VI. INFORMATION OR ACTION ON LEGAL MATTERS - None**

## **VII. INFORMATION FROM MAYOR AND CITY COUNCIL**

Roetman: Addressed the Department Heads and thanked them for a great job and acknowledged that he know how devastating and difficult it is to make the cuts that were needed.

Winters: Acknowledged tough time the Department Heads had in making the necessary cuts for the City's budget.

## **VIII. ADJOURN**

Motion by Roetman and Supported by Miller to adjourn the meeting at 10:02 pm. All in favor via voice vote.

Submitted by:

Karen M. Confer  
City Clerk